

## SENATE BILL NO. 26

INTRODUCED BY T. MURPHY

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REGULATION OF ECONOMIC CREDENTIALING OF PHYSICIANS; MODIFYING ECONOMIC CREDENTIALING REGULATIONS TO INCLUDE OUTPATIENT CENTERS FOR SURGICAL SERVICES AND TO EXCLUDE DIAGNOSTIC FACILITIES; DEFINING "CONFLICT OF INTEREST"; REVISING REGULATORY AUTHORITY OF DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; RETAINING THE RESTRICTION ON HOSPITALS LIMITING MEMBERSHIP OR PRIVILEGES; AMENDING SECTIONS 50-5-117 AND 50-5-207, MCA; REPEALING SECTION 6, CHAPTER 351, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 50-5-117, MCA, is amended to read:

**"50-5-117. (Temporary) Economic credentialing of physicians prohibited -- definitions.** (1) ~~A~~ Except to the extent necessary to determine physician competency or to comply with medicare or medicaid certification under Titles XVIII and XIX of the Social Security Act, respectively, or for accreditation by the joint commission on accreditation of healthcare organizations or ORGANIZATIONS THAT ACCREDIT HOSPITALS OR ~~BY the accreditation association for ambulatory health care~~ OUTPATIENT CENTERS FOR SURGICAL SERVICES, a hospital OR AN OUTPATIENT CENTER FOR SURGICAL SERVICES may not engage in economic credentialing by:

(a) ~~except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations;~~ requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital, to an outpatient center for surgical services, or to any facility related to the hospital or the outpatient center for surgical services;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan or outpatient center for surgical services health plan to a physician ~~or a partner, associate, or employee of the physician who has medical staff privileges~~ because the physician or a partner, an associate, or an employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital or an outpatient center for surgical services may:

~~—— (a) refuse to appoint a physician to the governing body of the hospital board or to the position of president of the medical staff or presiding officer of a medical staff committee if a conflict of interest exists or the physician or a partner or an employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or~~

~~—— (b) require recusal of a physician member of the board, the president of the medical staff of the hospital or outpatient center for surgical services, or the presiding officer of a medical staff committee from financial decisions and information related to the hospital or outpatient center for surgical services if the physician member of the board, president of the hospital medical staff or outpatient center for surgical services staff, or the presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.~~

(3) For the purposes of this section, the following definitions apply:

(a) "Board" means the governing body or board of directors of a hospital or an outpatient center for surgical services.

(b) ~~(i)~~ "Conflict of interest" means, notwithstanding the board's own conflict of interest policy, a situation in which a physician in a leadership position either individually or through an immediate family member, as defined in 15-30-602, or through a partner or employee of the physician has a financial interest in any health care facility that may compromise the board's fiduciary responsibility.

~~—— (ii) For the purposes of subsection (3)(b)(i), a financial interest exists if a person directly or indirectly holds through business or investment a greater than 5% ownership interest in any health care facility licensed under this chapter that offers similar services to a hospital licensed under this chapter.~~

(c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital or an outpatient center for surgical services on criteria other than the individual's education, training, current competence, experience, ability, personal character, and

1 judgment.

2 (ii) This term does not mean use by the hospital or the outpatient center for surgical services of:

3 (i)(A) exclusive contracts with physicians if the contracts do not violate the unfair trade practices  
4 provisions of Title 30, chapter 14, part 2;

5 (ii)(B) ~~equitable~~ medical staff on-call requirements ~~as determined by a supermajority of the medical staff~~  
6 ~~of the hospital or the outpatient center for surgical services. The~~ IF THE on-call requirements ~~may~~ DO not violate  
7 the UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION provisions of 30-14-103; ~~OR TITLE 30, CHAPTER 14, PART~~  
8 ~~2;~~

9 (iii)(C) adherence to a formulary approved by the medical staff; or

10 (iv)(D) other medical staff policy adopted to manage health care costs or improve quality.

11 (b)(d) "Health care facility" has the meaning provided in 50-5-101 ~~and includes diagnostic facilities.~~

12 (c)(e) "Health plan" means a plan offered by any person, employer, trust, government agency,  
13 association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health  
14 care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents,  
15 including but not limited to a health plan provided by an insurance company, health service organization, health  
16 maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple  
17 employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

18 (d)(f) "Physician" has the meaning provided in 37-3-102.

19 (4) ~~For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30,~~  
20 ~~2009--sec. 6, Ch. 351, L. 2007.)"~~

22 **Section 2.** Section 50-5-207, MCA, is amended to read:

23 **"50-5-207. (Temporary) Denial, suspension, or revocation of health care facility license --**  
24 **provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the  
25 following circumstances exist:

26 (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

27 (b) The staff is insufficient in number or unqualified by lack of training or experience.

28 (c) The applicant or any person managing it has been convicted of a felony and denial of a license on  
29 that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the  
30 health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, ~~except 50-5-117~~, is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court. ~~(Terminates June 30, 2009--sec. 6, Ch. 351, L. 2007.)~~

~~50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license --provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:~~

~~(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.~~

~~(b) The staff is insufficient in number or unqualified by lack of training or experience.~~

~~(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.~~

~~(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.~~

~~(e) There is cruelty or indifference affecting the welfare of the patients or residents.~~

~~(f) There is misappropriation of the property or funds of a patient or resident.~~

~~(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.~~

~~(h) Any provision of parts 1 through 3 is violated.~~

~~(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to~~

1 ~~comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

2 ~~——— (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate~~  
3 ~~of need requirements of part 3.~~

4 ~~——— (4) The department may provide in its revocation order that the revocation is in effect for up to 2 years.~~  
5 ~~If this provision is appealed, it must be affirmed or reversed by the court."~~

6  
7 NEW SECTION. **Section 3. Repealer.** Section 6, Chapter 351, Laws of 2007, is repealed.

8  
9 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

10 - END -